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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/654,858 | 09/04/2003 | Kenneth Roger Jones | 1033-SS00406 | 4667 |
| 60533 | 7590 | 12/14/2007 | EXAMINER | |
| TOLER LAW GROUP | | | NGUYEN, PHUOC H | |
| 8500 BLUFFSTONE COVE | | | | |
| SUITE A201 | | | ART UNIT | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/654,858

Applicant(s)

JONES ET AL.

Examiner

Phuoc H. Nguyen

Art Unit

2143

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7-13 and 15-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-13, and 15-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. This office action is in response to the amendment filed on April 6, 2007. Previous office action contained claims 1-37. Applicant amended claims 5, 11, 33 and cancelled claims 6, 14. Amendment filed on April 6, 2007 have been entered and made of record. Therefore, pending claims 1-5, 7-13, and 15-37 are presented for further consideration and examination.

Response to Arguments

2. Applicant's arguments with respect to claims 1, 5, 11, 16, 26, and 33 have been considered but are moot in view of the new ground(s) of rejection.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-5, 7-13, and 15-37 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-27 of U.S. Patent No. 10/654861.

Although the conflicting claims are not identical, they are not patentably distinct from each other because:

Claims 1-27 of U.S. Patent No. 10/654861 contain every element of claims 1-37 of the instant application and thus anticipated the claims of the instant application. Claims of the instant application therefore are not patently distinct from the earlier patent claims and as such are unpatentable over obvious-type double patenting. A later patent/application claim is not patentably distinct from an earlier claim if the later claim is anticipated by the earlier claim.

"A later patent claim is not patentably distinct from an earlier patent claim if the later claim is obvious over, or **anticipated** by, the earlier claim. In re Longi, 759 F.2d at 896, 225 USPQ at 651 (affirming a holding of obviousness type double patenting because the claims at issue were obvious over claims in four prior art patents); In re Berg, 140 F.3d at 1437, 46 USPQ2d at 1233 (Fed. Cir. 1998) (affirming a holding of obviousness-type double patenting where a patent application claim to a genus is anticipated by a patent claim to a species within that genus). " ELI LILLY AND COMPANY v BARB LABORATORIES, INC., United States Court of Appeals for the Federal Circuit, ON PETITION FOR REHEARING EN BANC (DECIDED: May 30, 2001).

"Claim 12 and Claim 13 are generic to the species of invention covered by claim 3 of the patent. Thus, the generic invention is "**anticipated**" by the species of the patented invention. Cf., Titanium Metals Corp. v. Banner, 778 F.2d 775, 227 USPQ 773 (Fed. Cir. 1985) (holding that an earlier species disclosure in the prior art defeats any generic claim) 4. This court's predecessor has held that, without a terminal disclaimer, the species claims preclude issuance of the generic application. In re Van Ornum, 686 F.2d 937, 944, 214 USPQ 761, 767 (CCPA 1982); Schneller, 397 F.2d at 354. Accordingly, absent a terminal disclaimer, claims 12 and 13 were properly rejected under the doctrine of obviousness type double patenting." (In re Goodman (CA FC) 29 USPQ2d 2010 (12/3/1993).

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims are rejected under 35 U.S.C. 102(e) as being anticipated by Voit et al. (Hereafter, Voit) U.S. Pub. No. 2006/0098670.

Re claim 1, Voit discloses a network management system (e.g. Figure 7B) comprising: a first connection to a wide area network (e.g. Figure 7B; page 18 paragraph 0195); wherein the first connection is configured to receive management information via a virtual connection from a data communication node (e.g. page 17 paragraphs 0172-0174 and 0180); wherein the management information includes service level information for a transparent connection between the data communication node and the wide area network (e.g. page 18 paragraph 0195), the transparent connection carrying encapsulated data traffic (e.g. page 16 paragraph 0163), the management information further including equipment failure information for a bridging node configured to generate the encapsulated data traffic (e.g. page 7 paragraph 0081)

Re claim 2, Voit further discloses the transparent connection is a Digital Subscriber Line (DSL) connection that carries Frame Relay packets encapsulated according to a DSL protocol (e.g. Figure 5; pages 15-16 paragraphs 0156 and 0158).

Re claim 3, Voit further discloses the management information is according to a Simple Network Management Protocol (SNMP) (e.g. pages 17-18 paragraphs 0180 and 0187).

Re claim 4, Voit further discloses the transparent connection is an intermediate network (e.g. ADSL Data Network) to the wide area network and a local area network (e.g. Figure 7B).

Re claim 5, Voit discloses a network management system (Figure 7b) comprising: a data network report collector (e.g. test server 83 or web server 81); and a data router having a first interface coupled to a wide area network (Figure 7b, link between gateway router 29 and cell relay 30); wherein data collected via the first interface includes management information regarding a service level of a first network for carrying data traffic between a local area network and the wide area network (e.g. page 17 paragraphs 0172-0174, 0180 and page 18 paragraph 0195).

Re claim 7, Voit's figure 7b further discloses the data traffic is communicated between the local area network and the wide area network according to a first protocol (e.g. Frame relay) and the bridging node encapsulates the data traffic from the local area node according to a second protocol (e.g. ADSL).

Re claim 8, Voit further discloses the first protocol is a frame relay type protocol and the second protocol is a Digital Subscriber Line (DSL) protocol (e.g. Figure 7B).

Re claim 9, Voit further discloses a second node de-encapsulates the data traffic and transmits the data traffic to the wide area network (e.g. figure 7b, data traffic transmit from the DSLAM 17 to the gateway router 29) .

Re claim 10, Voit further discloses the second node is a Digital Subscriber Line Access Multiplexer (DSLAM) (e.g. Figure 7B).

Re claim 11, Voit discloses a method comprising: collecting management information for a transparent connection carrying data traffic (e.g. page 16 paragraph 0163); using the management information collected to identify equipment failure information e.g. page 7 paragraph 0081); and using the management information collected to identify network service

provider service level information (e.g. page 6 paragraph 0058; page 9 paragraph 0103; and page 10 paragraph 0108).

Re claim 12, Voit further discloses presenting the service level information to a customer (e.g. page 10 paragraph 0112).

Re claim 13, Voit further discloses providing notification of a detected equipment failure (e.g. page 19 paragraph 0204).

Re claim 15, Voit further discloses the transparent connection is an intermediate network between a local area network and a wide area network (e.g. Figure 7B).

Re claim 16, Voit discloses a network management system configured to collect management information for one or more transparent Digital Subscriber Line (DSL) connections carrying encapsulated Frame Relay packets (e.g. Figure 5; pages 15-16 paragraphs 0156 and 0158; and page 17 paragraphs 0172-0174 and 0180).

Re claim 17, Voit further discloses the management information comprises equipment fault information of a DSL bridge and service level information of the one or more transparent DSL connections (e.g. figures 7a-b; page 16 paragraph 0162; page 17 paragraphs 0172-0174).

Re claim 18, Voit further discloses the one or more DSL connections are each coupled between a DSL bridge and a Digital Subscriber Line Access Multiplexer (DSLAM) (e.g. Figure 1).

Re claim 19, Voit further discloses the DSL bridge encapsulates Frame Relay packets sent from a Frame Relay transmitter and the DSLAM de-encapsulates the Frame Relay packets prior to forwarding the Frame Relay packets to a wide area network (e.g. Figure 1; page 8 paragraphs 0085-0089).

Re claim 20, Voit further discloses the DSLAM encapsulates Frame Relay packets sent from a wide area network and the DSL bridge de-encapsulates the Frame Relay packets prior to forwarding the de-encapsulated Frame Relay packets to a Frame Relay receiver (e.g. Figure 1; page 8 paragraphs 0085-0089).

Re claim 21, Voit further discloses the network management system collects the management information via a Frame Relay network (e.g. Figure 5; pages 15-16 paragraphs 0156 and 0158; and page 17 paragraphs 0172-0174 and 0180).

Re claim 22, Voit further discloses the network management system is configured to collect the management information according to a Simple Network Management Protocol (SNMP) (e.g. pages 17-18 paragraphs 0180 and 0187).

Re claim 23, Voit further discloses the network management system is configured to collect the management information via a virtual circuit from a data communication node coupled to at least one of the DSL connections (e.g. Figure 7a; page 19 paragraph 0201).

Re claim 24, Voit further discloses the encapsulated Frame Relay packets are carried on a virtual circuit between a Frame Relay transmitter and a Frame Relay receiver (e.g. Figure 7b).

Re claim 25, Voit further discloses the Frame Relay transmitter and the Frame Relay receiver are implemented as channel service unit/data service units (e.g. Figure 7B).

Re claim 26, Voit discloses a report collector (e.g. web server 81); and a middleware server (e.g. test server 83) configured to collect management information for a transparent Digital Subscriber Line (DSL) connection via a Frame Relay network and configured to forward the collected management information to the report collector (e.g. Figure 7b; page 17 paragraphs 0172-0178; and page 18, paragraphs 0187-0189).

Re claim 27, Voit further discloses the management information comprises customer equipment fault information and service level information of the transparent DSL connection (e.g. Figure 7b).

Re claim 28, Voit further discloses the customer equipment is a DSL bridge that encapsulates Frame Relay packets (e.g. page 19 paragraph 0201).

Re claim 29, Voit further discloses the report collector is configured to display the management information to a user (e.g. page 20 paragraph 0216).

Re claim 30, Voit further discloses the management information is used to differentiate between customer equipment failure and a service level agreement violation (e.g. page 10 paragraphs 0108-0109, 0112; and page 19 paragraph 0201).

Re claim 31, Voit further discloses frame relay packets are transparently encapsulated according to a DSL protocol and sent over the DSL connection (e.g. Figure 5; pages 15-16 paragraphs 0156 and 0158).

Re claim 32, Voit further discloses a router coupled to the Frame Relay network and the middleware server (e.g. Figure 7B).

Re claim 33, Voit's Figures 7B or 8A discloses a method comprising: collecting management information for a transparent Digital Subscriber Line (DSL) connection carrying encapsulated Frame Relay packets between Frame Relay data communication nodes (e.g. Test Server 83 collect the management information); and differentiating between a network outage caused by customer equipment failure and a service provider service level event using the management information (e.g. page 19 paragraph 0205).

Re claim 34, Voit further discloses the management information comprises equipment fault information of a DSL bridge and service level information of the transparent DSL connection (e.g. Figure 7B).

Re claim 35, Voit further discloses the management information is collected via a Frame Relay network (e.g. Figure 7B).

Re claim 36, Voit further discloses the management information is collected via a virtual circuit from one of the Frame Relay data communication nodes, wherein the virtual circuit communicates according to a Frame Relay protocol (e.g. traffic data transfer from the cell relay to the test server).

Re claim 37, Voit further discloses at least one of the data communication nodes is implemented as a channel service unit/data service unit (e.g. Figure 7B).

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Pub. 2002/0024964

U.S. Pat. 6,351,452

U.S. Pat. 6,271,845

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phuoc H. Nguyen whose telephone number is 571-272-3919.

The examiner can normally be reached on Monday - Friday.

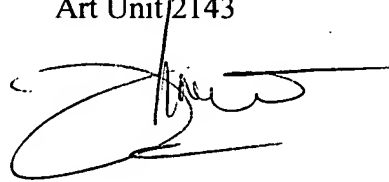
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Flynn can be reached on 571-272-1915. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Phuoc H Nguyen
Primary Examiner
Art Unit 2143

A handwritten signature in black ink, appearing to read 'Phuoc H Nguyen', with a long horizontal stroke extending to the right.

December 10, 2007